

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

KELLEY TROY COOLEY,

Plaintiff,

v.

COUNTY EXECUTIVE MARK DIVECCHIO,  
et al,

Defendants.

C.A. No. 06-178 ERIE

**MEMORANDUM ORDER**

Plaintiff's complaint was received by the Clerk of Court on August 9, 2006, and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The magistrate judge's report and recommendation, filed on April 18, 2008, recommended that Plaintiff's motion for summary judgment and/or declaratory judgment [Document # 45] be denied; the motion to dismiss filed on behalf of Defendant Erie County [Document # 50] be denied; and the motion for summary judgment filed on behalf of Defendant DiVecchio [Document # 56] be granted. It was further recommended that, pursuant to the authority granted to courts in the Prison Litigation Reform Act, Plaintiff's claims for declaratory and injunctive relief should be dismissed, as Plaintiff lacks standing to obtain such relief. The parties were allowed ten (10) days from the date of service to file objections. Objections were filed by the Plaintiff on May 20, 2008. After de novo review of the pleadings and documents in the case, together with the report and recommendation and objections thereto, the following order is entered:

AND NOW, this 14<sup>th</sup> Day of July, 2008;

IT IS HEREBY ORDERED that the Plaintiff's motion for summary judgment and/or declaratory judgment [Document # 45] is DENIED; the motion to dismiss filed on behalf of Defendant Erie County [Document # 50] is DENIED; and the motion for summary judgment filed on behalf of Defendant DiVecchio [Document # 56] is GRANTED. It is further ORDERED that,

pursuant to the authority granted to courts in the Prison Litigation Reform Act, Plaintiff's claims for declaratory and injunctive relief are DISMISSED, as Plaintiff lacks standing to obtain such relief. The only claims that remain pending are Plaintiff's Eighth Amendment and equal protections claims against Defendant Erie County, to the extent Plaintiff seeks monetary damages.

The report and recommendation of Magistrate Judge Baxter, dated April 18, 2008, is adopted as the opinion of the court.



MAURICE B. COHILL, JR.  
United States District Judge

cc: Susan Paradise Baxter  
U.S. Magistrate Judge

all parties of record \_\_\_\_\_